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Counsel for Individual and Representative Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

J. DOE 1, et al.,

Individual and Representative Plaintiffs,

V.

GITHUB, INC., et al.,

Defendants.

Case Nos.: 4:22-cv-06823-JST
4:22-cv-07074-JST

NOTICE OF SUPPLEMENTAL AUTHORITY

1 Plaintiffs hereby notify the Court of newly issued authority relevant to their Motion to Amend
2 and Certify the Court's June 24, 2024 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b)
3 (ECF No. 268). On August 12, 2024, the Honorable William H. Orrick issued an order dismissing
4 claims under section 1202(b) of the Digital Millennium Copyright Act ("DMCA"). Order Granting in
5 Part and Denying in Part Motions to Dismiss First Amended Complaint at 33, *Andersen et al v. Stability*
6 *AILtd. et al*, No. 3:23-cv-00201-WHO (N.D. Cal. Aug. 12, 2024), ECF No. 223 (attached hereto as
7 Exhibit 1). In pertinent part, Judge Orrick surveyed cases confronting the question of whether section
8 1202 claims require an element of identicity, including this Court's decision in *Doe 1 v. GitHub, Inc.*,
9 No. 22-CV-06823-JST, 2024 WL 235217 (N.D. Cal. Jan. 22, 2024) (finding section 1202 claims require
10 "identicity") and *ADR Int'l Ltd. v. Inst. for Supply Mgmt. Inc.*, 667 F. Supp. 3d 411 (S.D. Tex. 2023)
11 (rejecting an "identicity" requirement). *Id.* at 12-13. Judge Orrick dismissed the section 1202 claim
12 while noting that the issue of whether the DMCA contains an identicity requirement "is unsettled."
13 *Id.* at 13.

1 Dated: August 15, 2024

Respectfully Submitted,

2 By: /s/ Joseph R. Saveri
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